

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
AT CINCINNATI**

BRANDEN MCAFEE

Plaintiff,

v.

I.C. SYSTEM, INC.,

Defendant.

CASE NO. 1:24CV474-DRC-SKB

Judge Douglas R. Cole

Magistrate Judge Stephanie K. Bowman

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**DEFENDANT’S MEMORANDUM IN OPPOSITION TO PLAINTIFF’S  
MOTION FOR CONTINUANCE**

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Now comes Defendant, by counsel, and opposes Plaintiff’s motion for continuance. That motion should be denied because Plaintiff does not need discovery to respond to Defendant’s motion for judgment on the pleadings. Defendant’s motion for judgment on the pleadings highlighted the defects in Plaintiff’s complaint. Defendant’s motion for judgment on the pleadings raised two issues:

1. Plaintiff’s claim under 15 U.S.C. § 1692c(c) requires facts demonstrating that Defendant attempted to collect a "debt" as defined in 15 U.S.C. § 1692a(5). Specifically, Plaintiff needed to allege that the account was a "debt" incurred primarily for personal, family, or household purposes. However, Plaintiff has failed to do so, and he cannot allege facts showing that the account referenced in the Complaint was incurred for such purposes. Plaintiff will not be able to amend, in good faith, the Complaint to make that allegation.
2. Plaintiff’s claim under 15 U.S.C. § 1692c(c) requires Plaintiff to allege facts showing that Plaintiff was a “consumer”, as that term is defined in 15 U.S.C. 1692a(3). Specifically, Plaintiff needed to allege that he is obligated or allegedly

obligated to pay a “debt”. *Montgomery v. Huntington Bank*, 346 F.3d 693, 696 (6th Cir. 2003). Plaintiff’s complaint is devoid of any such allegation. Plaintiff will not be able to amend, in good faith, the Complaint to make that allegation.

Those issues arise solely from the Complaint. Defendant’s motion did not rely upon materials outside of the Complaint. Because Plaintiff does not need discovery to respond to Defendant’s motion for judgment on the pleadings, Plaintiff’s motion for continuance should be denied.

Respectfully Submitted,

/s/Boyd W. Gentry  
Boyd W. Gentry (0071057)  
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*Trial Attorney for Defendant*

**Certificate of Service**

I certify that the foregoing has been served to Plaintiff by placing it in the mail on October 16, 2024, first class postage prepaid, addressed to the following:

Branden McAfee  
300 E Business Way  
Suite 200  
Cincinnati, OH 45204

/s/Boyd W. Gentry  
Boyd W. Gentry (OH#0071057)